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Supreme Court, U.S.
FILED

03 - 31 JUL 2 - 2003

No. 02-

In The
Supreme Court of the United States

Michael McNeill,

Petitioner

v.

Town of Paradise Valley, an Arizona Town; Elsa Lynch, Paradise Valley Municipal Court Judge and an individual; Jill Kennedy, Former Paradise Valley Town Prosecutor and an individual; Sherwood Johnston III, Town of Paradise Valley Hearing Officer and an individual; Mike Coppola, Paradise Valley Police Officer and an individual;

Respondents

On Petition for a Writ of Certiorari
to the Ninth Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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118 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether or not Photo Radar complaint and summons to appear thereon violated Petitioner's Constitutional Rights.

2. Whether or not defendant Judge, hearing officer, Prosecutor and/or Police office are immune from suit.

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OPINIONS BELOW

The opinion and order of the United States court of appeals appears at Appendix IV to the petition and is unpublished.

The order of the United States district court on Motion to Dismiss Docket No. 45 appears at Appendix I to the Petition and is unpublished.

The order of the United States district court on Motion for Summary Judgment Docket No. 127 appears at Appendix II to the petition and is unpublished.

The order of the United States district court on Motion for Summary Judgment Docket No. 148 appears at Appendix III to the petition and is unpublished.

JURISDICTIONAL STATEMENT

In its decision filed August 19, 2002 the United States Court of Appeals (9th cir.) denied Plaintiff/Appellant's appeal. (Appendix IV).

A timely petition for rehearing and rehearing in banc was denied by the United States Court of Appeals (9th cir.) in its decision filed March 4, 2003 and a copy of that order denying rehearing appears at Appendix IV.

An extension of time of time to file the petition for writ of certiorari was granted to and including July 2, 2003 on May 21, 2003 in Application No. 02A981.

This jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDANCES AND REGULATIONS [1]

UNITED STATE CONSTITUTION:
Fourth Amendment.
Fifth Amendment.
Eighth Amendment.
Ninth Amendment.
Thirteenth Amendment.
Fourteenth Amendment.
ARIZONA CONSTITUTION:
Article III
Article IV
STATUTES:
42 U.S.C. 1983
Fed. R. Civ. P. 56C
ARS Sec. 28-1062
ARS Sec. 28-1561
PARADISE VALLEY TOWN CODE
Paradise Valley Town Code Sec.11-2-18

STATEMENT OF THE CASE

Respondents served Petitioner by regular mail a photo radar traffic complaint in August of 1997. Respondents again served Petitioner on October 31, 1997 by certified mail a photo radar traffic complaint and a **subpoena,** (same envelope) requiring Petitioner to testify for the state. The complaint bears a computer generated printed name; it is not signed by issuing officer nor is any certification attached to the complaint nor was any certification in the court record of State of Arizona v. Michael McNeill Case No. 223473A (Court Record "Doc." 102 exhs. E, I and J; doc. 129 exh. 1 to exh. A pp. 114, 115, 116, 136, 137; Appendix II pp. 6, 7, 8).

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[1] Federal and state constitutional provisions, statutes and codes listed on this page appear in Appendix VII..

Arizona's Constitution, Articles III (Distribution of Powers) and IV (vested the legislative authority of the State to Arizona to the Arizona Legislature. Arizona Statutes (ARS Sec 28- 1062 renumbered 1561) requires a certification under penalty of perjury by issuing officer for valid traffic complaint to issue. The Paradise Valley Town Code 11-2-18 (a) tramples on the Arizona Constitution and eviscerates from the Federal Constitution protections the framers intended all citizens enjoy. The Town Code (Appendix VII) allows for photo radar complaints based upon a magistrates persuasion; said magistrates also tries the matter. The Town Code **does not** require issuing officer certify photo radar complaints under penalty of perjury. (Appendix VII). Petitioner filed his Complaint for deprivation of civil rights Re: 42 USC 1983 and racketeering Re: 18 USCA 1962 on February 22, 1999. (Doc. 1).

Petitioner filed his First Amended Complaint on June 6, 1999 alleging violations of his Fourth, Fifth, Eighth, Ninth, Thirteenth and Fourteenth Amendment civil rights Re: 42 USC 1983 and for Racketeering Re: 18 USCA 1962 against named real/natural person defendants. Petitioner further alleged photo radar complaints are not valid and that the court lacked jurisdiction to issue its process. (Doc. 25).

The custom and practice of respondent Town is to have its agent/employees issue photo radar complaint solely to registered owners of vehicles including corporations where it is metaphysically impossible for said corporation/ companies to violate ARS Sec. 28-701A by operating a vehicle at a speed that is greater than reasonable and prudent. The custom and practice of respondent Town is to have defendant registered owners identify the actual driver of suspect vehicles; thus the subpoena to Petitioner requiring him to testify for the State. (Doc. 102 exhs. E, I and J; doc. 129 pp. 114, 115, 116, 136, 137; Also See: Appendix IX; *Tonner v. Paradise Valley*, 171 Ariz. 449, 831 P.2d 448 (Ariz.App.Div.1

1992). The court dismissed Petitioner's claims against respondents Lynch, Kennedy and Johnston on grounds of judicial and prosecutorial immunity. (Docs. 38, 45). Subsequently the Court dismissed Appellant's civil rights claims against Coppela. (Doc. 74).

Respondents moved for summary judgment filed on December 12, 00 (Doc. 102). Petitioner filed a cross motion on. (Doc. 105). At time Fed.R.Civ.P. 56(c) motions were heard, no admissible certification was before the court entitling Plaintiff to summary judgment on issue of invalid complaint (Appendix II pp. 6, 7, 8) The court granted defendant's motion on all issues save Fourth Amendment issues. (Doc. 127).

Respondents moved for summary judgment on Fourth Amendment issues filed on June 15, 01 (Doc. 133). Petitioner filed a cross motion for summary judgment on July 17, 01 (CR 142). The court considered Petitioner's cross motion as a response and granted defendant's motion. (Doc. 148). The Court's final judgment entered on August 15, 2001. (Doc. 149). The district court had jurisdiction pursuant to 28 USC 1331(a). Petitioner timely filed his Notice of Appeal on September 7, 2001. (Doc. 152). The Court of Appeals (9th cir.) on August 19, 2002 denied Petitioners appeal and on March 4, 2003 denied Petitioners motion for rehearing and rehearing in banc.

REASONS FOR GRANTING THIS PETITION

The opinions below ignored **Fed.R.Civ.P.56(c)**, violate Article III of the Arizona Constitution, **Distribution of Powers,** and reject Article IV of the Arizona Constitution vesting to the Arizona Legislature **exclusive authority to Legislate for the State** all of which calls for this Court to exercise its supervisory powers.

ARGUMENT

THE PARADISE VALLEY TOWN CODE SEC. 11-2-18A IS UNCONSTITUTIONAL

Petitioner's arguments rely upon the Federal and State Constitutions, related authorities and Arizona Statutes and Authorities. [2]

DISTRIBUTION OF POWERS

> The powers of the government of the State of Arizona shall be divided into three separate departments, the Legislative, the Executive, and the Judicial; and, except as provided by the Constitution, such departments shall be separate and distinct, and no one of such departments shall exercise powers properly belonging to either of the others.

Arizona Constitution Article III.

> The legislative authority of the State shall be vested in a legislature, consisting of a Senate and a House of Representatives, but the people reserve the power to propose laws and amendments to the Constitution and to enact or reject such laws and amendments at the polls, independently of the Legislature; and they reserve, for use at their option, the power to approve or reject at the polls any Act, or item, section, or part of any Act, of the Legislature.

Arizona Constitution Article IV Sec. 1

[2] Except in matters governed by the Federal Constitution or by the acts of Congress, the law to be applied in any case is the law of the state. Erie Railroad v. Thompkins, 304 U.S., 64, 58 S. Ct. 817, 82 L.Ed. 1188 (1938).

The legally elected representatives of the people, enacted the following statute:

> A. Uniform traffic complaint forms need not be sworn to if they contain a form of certification by the issuing officer in substance as follows: '"I hereby certify that I have reasonable grounds to believe and do believe that the person named herein committed the offense or civil violation described herein contrary to law."' B. A false certification under the provisions of subsection A constitutes perjury.

ARS Sec. 28-1062 [3]

Paradise Valley's circumvention of ARS 28-1062, is illuminated in its following Town Code:

> A. ...if any vehicle has been driven in violation of the speed restrictions of this Article or Title 28 Chapter 6, Article 6 of the Arizona Revised Statutes or A.R.S. 28-797 the proof of identity of the person in whose name the vehicle is registered pursuant to Title 28, Chapter 3 of the Arizona Revised Statutes may be sufficient evidence that such person was responsible for such violation, in absence of probative contrary evidence and if the magistrate is so persuaded . . . The registered owner of such violation, if not the person responsible for such violation, shall upon request inform the magistrate or Town attorney of the identity of the person responsible for such violation, if known.

Paradise Valley Town Code Sec.11-2-18A and C.
(Aso See: doc 127 p. 13 ll 27-28).

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[3] Renumbered effective Oct. 1, 1997 from 28-1062 to 28-1561 the Legislature changed one (1) word in subsection B; from ("constitutes" perjury) in 1062 to ("is" perjury) in 1561.

The Town Code eliminates the legislatures requirement of a traffic complaint signed by issuing officer under penalty of perjury. Pursuant to the Town Code photo radar complaints issue predicated upon a magistrate persuasion absent probative contrary evidence; of course, such evidence never exists. Photo Radar complaints allege violations of ARS Sec. 28-701A. For well over a decade Paradise Valley has been issuing Photo Radar complaints to corporations. [4] [5] (Also See: Appendix IX). ARS Sec. 28- 1062/1561 does not allow corporations to be ticketed as drivers of speeding vehicles.

Where the subject is of local interest, or city charter confers express power to legislate, both state and city may legislate on same subject, but where subject of legislation is of statewide concern, and the legislature has acted, its

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[4]

> A person shall not drive a vehicle on a highway at a speed greater than is reasonable and prudent under the circumstances, conditions and actual potential hazards then existing. A person shall control the speed of a vehicle as necessary to avoid colliding with any object, person, vehicle or other conveyance on, entering or adjacent to the highway in compliance with legal requirements and the duty of all persons to exercise reasonable care for the protection of others.

(ARS Sec. 28-701A).

[5]

> On February 11, 1990, the photo radar devise operated by the Town of Paradise Valley detected a vehicle registered to General Motors Acceptance Corporation ("GMAC") traveling at an alleged speed of fifty-six miles per hour in a forty mile per our zone. A summons and were mailed to GMAC alleging a violation of Ariz. Rev. Stat. Ann.("A.R.S.") Sec. 28-701 (1989), driving at a speed greater than is reasonable and prudent. GMAC forwarded the summons to appellee and his wife, the lessees of the vehicle. GMAC also sent the Paradise Valley Magistrate's Court a copy of its transmittal letter to appellee. The summons and traffic complaint were reissued, naming Tonner as the defendant and the infraction of section 28-701.

Tonner v. Paradise Valley, 171 Ariz. 449, 831 P.2d 448 (Ariz.App.Div.1 1992).

declaration is binding throughout state. *Keller v. State* 46 Ariz. 106, 47 p.2d442 (1935).

In Paradise Valley the magistrate(s), who pursuant to the Town Code must be convinced the person responsible is the registered owner for a photo radar complaint to issue, are the magistrates who sit in judgment at trial. Petitioner's affidavit, (uncontroverted), fully documents the events in the Paradise Valley Court on February 23, 1998 where defendant judge Lynch 1) ignored Petitioner's motions to dismiss, 2) would not allow Petitioner to speak, 3) ordered police officers to remove Petitioner from the courtroom never having made a ruling, 4) obstructed justice by destroying evidence, and 5) where police officers had Petitioner surrounded at the clerk of the court's window caused Petitioner to be in fear of his life. (Appendix VIII; Doc. 106 Exh. 1) [6]

In commenting on of Petitioners Forth Amendment rights the court of appeals stated: "Additionally, because McNeill successfully challenged the citation in municipal court, he received all the process he was due." This conflicts with *Ward v. Village of Monroeville* 409 U.S. 57, 93S.Ct. 80, 34 L.Ed. 2nd 267(1972) where this Court stated: "Nor, in any event, may the State's trial court procedure be deemed constitutionally acceptable simply because the State eventually offers a defendant an impartial adjudication. Petitioner is entitled to a neutral and detached judge in the first instance." Id.

Pursuant to the Fourteenth Amendment, Petitioner and all citizens are entitled to due process and the equal protection of the laws enacted by the Arizona State Legislature. The Town Code denies citizens their Fourteenth Amendment civil rights; the Town Code Sec. 11-2-18A is on its face, demonstrably unconstitutional!

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[6] Petitioner's Affidavit, Appendix V, Cr 106 Exh. 1 is incorporated herein by this reference made a part here of as though fully stated.

JURISDICTIONAL PREQUISITE REQUIRES COMPLAINT CERTIFIED ACCORDING TO LAW

The Photo Radar Complaint issued to Petitioner Was Not Certified As Required by Arizona Statutes And Authorities For Valid Complaint To Issue

In Arizona, a typical traffic complaint is a post arrest complaint and when signed by issuing officer under penalty of perjury, gives to the traffic court or justice of the peace jurisdiction. *Cf State Ex Rel Purcell v Superior Court 109 Ariz. 460, 511 P.2d 642 Ariz. S.Ct. in banc (1973).*

A.R.S. Sec. 28-1062A requires that traffic ticket complaints contain a certification, subject to perjury, by issuing officer that officer has reasonable grounds to believe that the individual list on the complaint committed the offense. See: *Baumert v. Municipal Court for the City of Phoenix,* 119 Ariz. 142,144, 579 P.2d 1112, 1114 (App 1978); *Sweitzer v. Department of transportation, Motor Vehicle Division,* 536, 537, 683 P.2d 335(App.1984).

The case of *People v. Harding,* 34 Ill. 2d 475, 480, 216 N.E. 2d 147, 151-52 (1966), cited *in State v. ex rel. Purcell v. Superior Court in and for Maricopa County,* 109 Ariz. 460, 511 P.2d 642(1973), decided the same issue stated herein (statutory provisions require certification of a uniform traffic complaint as a jurisdictional prerequisite).

> [U]ntil a court acquires jurisdiction of a case through the filing of a legal complaint, affidavit or other form of charge, neither it nor anyone else has power or authority to issue its process. Legal process is issued by courts, not police officers. Entitling a paper a 'summons' (or citation) does not invest it with the efficacy and legal status of such process, nor does its title transform it into something which it is not. *City of Mercer Island v. Crouch,* 12 Wash. App. 472, 476, 530 P.2d 344 quoting Donigan & Fisher, Courts

View the Uniform Citation and Complaint, Traffic Dig. & Rev. 32 at 38 (July 1961)

People v. Harding, 34 Ill. 2d 475, 480, 216 N.E. 2d 147, 151-52 (1966)

Any person did not sign the photo radar complaint issued to Petitioner; a **computer generated** name is printed upon said complaint. (Appendix VI Par. 8; Cr doc. 102 exhibit E an D). The district court at doc. 127 p. 7 –14 through p. 8-25 documents the above facts and Petitioner's objections to said exhibits E and D. (Appendix II pp. 6, 7, 8).

The long and short of the court opinion is:

1) Over ruled Petitioner's objections to exhibit E to wit. "Exhibit E, a copy of a ticket issued to McNeill, speaks for itself";
2) The court admitted the complaint was not certified and there was not a certification of the complaint in a certified copy Paradise Valley Municipal Court files in case number 223473 A to wit: "Exhibit D is not among the 81 page file."

(Appendix II). Herein lies the crux of the matter. [7, 8]

[7] Defendants Lynch, Johnson, Kennedy and Coppela are agents of defendant Town of Paradise Valley who while acting as agents for, and conforming to Town of Paradise Valley's official policy, custom, regulation, rule or practice and in violation of clearly established law caused McNeill to suffer a deprivation of McNeill's Fourth, Fifth, Eighth, Ninth, Thirteenth and Fourteenth Amendment Civil Rights."(First Amended Complaint, Doc. 25 Par. IX).

[8] With deliberate indifference to McNeill's Constitutional Rights, it is the official policy, custom or practice of defendant Town of Paradise Valley to use, promote the use, or contract to use **"Photo Radar"** where in violation of clearly established law defendants issue traffic ticket complaints and summons to appear thereon, where the traffic ticket complaint is not valid, and The court issuing summons does not have jurisdiction, and that

> It is true that a computer-generated facsimile signature is presumed to be a valid certification absent contrary evidence. *Irving* , 165 Ariz. at 225, 797 P.2d 1243. It is also true that some indicia of the requisite "human involvement" must be apparent from the face of the document or, for the foregoing reasons, the computer-generated facsimile signature, standing alone, will fail.

State v. Johnson 184 Ariz. 521, 911 P.2d 527 (App.1994) at 184 Ariz 525 (Reconsideration denied Aug. 2, 1995, Review denied Feb. 21, 1996); Also See: 184 Ariz. 521, 523 B [4]. [9, 10]

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policy, custom or practice is the proximate cause of McNeill's damages. (First Amended Complaint, doc. 25 Par. X).

[9] The district court at doc. 127 p. 7 –14 through p. 8-25 (Appendix II) speaks to the record in the Paradise Valley Municipal Court which does not appear in the district court record at the time the court's order doc. 127 appears in the record. Because of these irregularities and others Plaintiff McNeill filed a motion to strike the Paradise Valley Court Record and his objections to the court ordering same to be produced. (Doc. 120). Defendant's response to said motions (doc. 129) does contain a copy of the Paradise Valley court record. Exhibit A to doc. 127 shows that exh. 1 to exh. A is the Paradise Valley court record referred to by the court at doc.127 p. 7 –14 through p. 8-25.

[10] In Appellant's Opening Brief, Issues Presented Paragraph 4 (d) Appellant McNeill asked: "Whether or not the trial court denied McNeill a fair trial". Summary judgment is to be entered based upon the record before the court at time motion is heard. Fed.R.Civ.P. 56 (c) (Appendix VII). There being no admissible certification of the photo radar complaint before the court and there being no genuine issue of material fact, Plaintiff McNeill was entitled to judgment in his favor as to the issue of defendants lack of jurisdiction when issuing the court's process on invalid complaint to Plaintiff.

> [A]dditional foundation is required to establish requisite "human involvement" which entitles the offeror to the **statutory presumption.** *See generally* 5 Wigmore, *Evidence* Sec. 1635 (Chadbourn rev. 1975) . . . Additionally, the necessary human element would be established with some indicia on the face of the document, for instance as in *Barkley*, that the certification process was not totally computer driven. (emphasis added).

Id. 184 Ariz. 526.

There is no statutory presumption allowing for the self-authentication of traffic complaints in the State of Arizona. ARS Sec. 28-110 subd. F addressed by the court in *State v. Johnson*, 184 Ariz. 521, 523 B [4], provided for the self authentication Motor Vehicle Division ("DMV") records to do away with necessity of someone from the DMV appearing in court to certify records. (ARS Sec. 28-110 subd. F). Further if self-authentication of traffic complaints were allowed, said certification would fail as a matter of law; "human involvement" must be apparent from the face of the document or, for the foregoing reasons, the computer-generated facsimile signature, standing alone, will fail. *State v. Johnson, Supra.*

In one fell swoop Paradise Valley avoids the requirements of the legislature as stated in the statutes for a valid complaint to issue, that being a complaint certified under penalty of perjury by issuing officer; instead photo radar complaints issue pursuant to an unconstitutional Town Code to registered owners if a magistrate is persuaded the registered owner is responsible. Id. 184 Ariz. 521, 523 B [4]. (ARS Sec. 1062/1561; Paradise Valley Town Code Sec.11-2-18A). Courts issue process. *People v. Harding* 34 Ill. 2d 475, 480, 216 N.E. 2d 147, 151-52 (1966) A perquisite for a court to have jurisdiction is a valid complaint.

People v. Harding, Supra; State Ex Rel Purcell v Superior Court, Supra. In Arizona for a valid traffic complaint to issue the complaint must be certified under penalty of perjury. ARS Sec. 28- 1062/1561; *State Ex Rel Purcell v Superior Court, Supra; Baumert v. Municipal Court for the City of Phoenix,Supra; Sweitzer v. Department of transportation, Motor Vehicle Division; Supra.* ARS Sec. 28 1062/1561 is binding throughout the State of Arizona including Paradise Valley. *Keller v. State, supra; Arizona constitution Art. III, IV.* The complaint was not signed by issuing officer. (Doc. 102 exh. E; doc. 129, exh. A to exh. 1 p. 103). No certification of the complaint existed in the record of the Paradise Valley municipal court. (Appendix II pp. 6, 7, 8, doc. 127 p. 7 –14 through p. 8-25 ; doc. 129 exh A, to exh. 1). The Paradise Valley magistrates court wanted jurisdiction when issuing its process ordering Petitioner to appear on "photo radar" complaint not certified in accordance with Arizona Statutes.

DEFENDANT JUDGE, HEARING OFFICER, PROSECUTOR AND POLICE OFFICER ARE NOT IMMUNINE FROM SUIT

Judges are not immune from suit when acting in clear absence of all jurisdiction. *Stump v. Sparkman,* 435 US 349 (1978). The Paradise Valley municipal court **does not** have jurisdiction over "photo radar" complaints issued pursuant to an unconstitutional Town Code. Paradise Valley approved a Town Code that directly and intentionally violates statutes enacted by the lawfully elected representatives of the people and in so doing illegally usurped powers belonging solely the Arizona Legislature. Usurping power, then claiming photo radar complaints are complaints authorized by the legislature endowing magistrate courts with subject matter jurisdiction predicated upon the first unconstitutional act is obscene, repugnant, and a vile perversion of the rule of law and is constitutionally unaccept-

able. Usurping jurisdiction is treason to the United States constitution. *Reaich v Truax, 219 F. 273, 284 (1915).* When a prosecutor performs the investigative functions normally performed by a detective or police officer, it, is "neither appropriate nor justifiable that, for the same act, immunity should protect one and not the other." *Buckley v. Fitzsimmons,* 509 U.S. 259, 274 125 Led 2d 209, 113 S. Ct. 2606 (1993). The prosecutor's office served Petitioner with a subpoena to testify for the State. (Doc. 102 exh. I; doc. 129 pp. 114, 115, 116, 136, 137; Appendix II P.6 re: exh. J; Appendix VIII P.4 PP.11). Identifying drivers, allegedly guilty of speeding is a function normally performed by a detective or police officer; the prosecutor did not automatically have absolute immunity. Further, any act performed by the prosecutor pursuant to an unconstitutional Town Code, there being no valid complaint, could not be an act normally performed by prosecutors. Petitioners racketeering claims against all real/natural person defendants are actionable, just and are not precluded by a defense of absolute nor qualified immunities. Az. Cont. Arts. III, IV; U. S. Const. 14th Amend.

THE TOWN OF PARADISE VALLEY IS LIABLE FOR VIOLATIONS OF PETITIONER'S FOURTH, FIFTH, EIGHTH, NINTH, THIRTEENTH AND FOURTHTEENTH AMENDMENT CIVIL RIGHTS

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except

that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. Sec. 1983

Petitioner's Fourteenth amendment civil rights to due process and equal protection of the laws were violated as discussed above: This done pursuant to an unconstitutional Town Code. It is the custom of respondent Town as stated in its Town Code to have its agents and employees violate the civil rights of citizens when issuing "Photo Radar" complaints and further violate said civil rights when compelling them to appear and defend. Respondent Town having indoctrinated its agent/employees in the art, practice and custom of violating citizens civil rights is liable for all civil rights violations suffered by citizens at the hands of said agent/employees, where said violations were committed for the purpose of supporting, promoting, and enforcing said unconstitutional Town Code.

Petitioner was surrounded by police officers at the Clerk of the Court's window and placed in fear of his life. (Appendix VII).[11] Petitioner was under arrest and a prisoner. The eighth amendment forbids cruel and unusal punishment. Prisoners have eighth amendment protection. *Cf Hudson v. McMillian et. Al. 503 U.S. 1, 112 S. Ct. 995 (1992).* Injuries need not be physical or visible. Id. Phsychological

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[11] "Viewed objectively, Morgan was placed under arrest, without the issuance of a warrant, at the moment the police encircled the Morgan residence." United States v. Azzawy,784 F.2d 1158, 1164 (9th Cir. 1885) Also See: footnote 5.

harm might prove to be cruel and unusual punishment. Id. at 112 S. Ct. 1004 paragraph II, concurring opinion of Justice Blackmun. Petitioner is entitled to eighth amendment protection. "Excessive bail shall not be required, nor excessive fines be imposed, nor cruel and unusual punishments inflicted." (United States Constitution, Eighth Amendment). Surrounding Petitioner and placing him in fear of his life and forcing him to leave on pain of death, places he had a legal right to be and occupy because he refused to capitulate to corrupt public officials violated Petitioner's Fourth, Fifth Eighth and Fourteenth Amendment civil rights. Respondent's actions constitute a further violation of Petitioner's Fourth amendment civil rights.

Arizona sets a high standard for issuing traffic complaints. Issuing officer must certify under penalty of perjury to: a) to having reasonable grounds to believe and that the person named committed the offense or civil violation described herein contrary to law, and b) believing that the person named committed the offense or civil violation described herein contrary to law. ARS Sec. 28-1062/1561. In Arizona stopping a vehicle constitutes an arrest of the driver. [12] Arizona requires probable cause to issue a traffic complaint. [13] Respondents denied Petitioner his absolute right to be lawfully arrested and be issued a traffic complaint predicated upon reasonable grounds/probable cause Thereby violating petitioner's Fourth, Fifth and fourteenth Amendment civil rights. (See: footnotes 6, 9 and 10).

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[12] When a driver is accosted by police and stopped on a highway, his freedom was restrained and he was "seized" within meaning of U.S.C.A. Const. Amend. 4. *State v. Ochoa*, 112 Ariz. 582, 544 P.2d 1097 (1976).

[13] "We further note agreement with the court of appeals that the phrases probable cause and reasonable grounds to believe refer to the same standard of proof." *In Matter of Maricopa Juvenile Action*, 138 Ariz. 282, 284, 674 P.2d 836 (Az.S.Ct. en Banc 1983); Also See: *In Matter of Maricopa Juvenile Action*, 138 Ariz. 305, 674 P.2d 859 (App. 1983) at footnote 3, Review Granted Sept. 13, 1983; ARS Sec. 28-1062/1561.

"God, by giving to men needs and making them dependent upon the resource of labor, has made the right of labor the property of all men, and that property is primary, the most sacred and the most imprescriptible of all." (Anne Robert Jacques Turgot 1727- 1781). Petitioner within the law has a right to labor where and for whom he chooses, to be gainfully employed, and the right to enjoy the fruits of his labor. "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." (United States Constitution, Ninth Amendment). The Ninth Amendment guarantees the people all other fundamental and inalienable rights not specifically enumerated in the previous eight amendments including Petitioner's property right in his labor and liberty right to do so where he chooses. Petitioner **does not** choose to spend nano second of his time nor a quantum of energy supporting the corrupt police powers of respondent Town.

Respondents violated Petitioner's Thirteenth Amendment civil rights when illegally forcing him to appear for the purpose of supporting the police powers of the Town of Paradise Valley against his will. Upon being notified of a complaint in his mail Petitioner called the Paradise Valley Clerk's office; Petitioner was told he had to appear and identify the driver of the vehicle. Affidavit of McNeill pars. 1-6 (c), Appendix VIII). On (October 31, 1997) and in the same envelope Petitioner was served by certified mail with a summons to appear on a photo radar complaint and a **subpoena to testify for the State.** (Affidavit of McNeill pars. 8, Appendix VIII). Respondents admit Petitioner was subpoenaed to testify for the State. (Doc. 102 exh. I; doc. 129 pp. 114, 115, 116, 136, 137). The complaint states a defendant need not appear if said defendant identifies the guilty driver. (doc. 102 exh. E; doc 129 Exh. 1 to exh. A p. 104 option 4b). The custom in Paradise Valley is to issue photo radar complaints to registered owners including corporations which cannot be responsible for violating ARS Sec. 28-

701. Defendant corporations and other defendants are used to identify the guilty driver who is then issued a complaint. (See: footnote 5). In the same photo radar shoot resulting in Petitioner being issued a summons and photo radar complaint, corporations were ticketed eight (8)times. (Appendix IX). Respondent's agents/employees did not subpoena Petitioner to testify for the **State** because Petitioner was believed to be guilty; respondent subpoenaed Petitioner knowing he was not guilty for the purpose of forcing him to appear and identify the driver from the photograph and do so in court. It is the custom and practice of respondent to have its agents/employees force registered owners support the police powers of respondent Town without compensation and that is a violation of that citizens Thirteenth Amendment civil right which prohibits involuntary servitude.

PETITIONER WAS ENTITLED TO HAVE SUMMARY JUDGMENT ENTERED IN HIS FAVOR ON ISSUE OF INVALID COMPLAINT

> If it affirmatively appears, from the pleadings, admissions, depositions, and affidavits, if any, that there is no genuine issue as to any material fact upon which the outcome of litigation depends, the case is appropriate for disposition by summary judgment and it becomes the duty of the court to enter such judgment.

SMS Mfg. Co. V. U.S.-Mengel Plywoods, C.A. Okl. 219 f. Supp. 606 (1955).

Summary judgment is decided upon the record before the court at time motion is heard. Fed. R. Civ. P. 56(c); Also See: footnotes 9 and 10). As noted by the district court Petitioner objected to exh. D as not "verified" or "certified" by any court. Also exh. D was not a part of any court record. (Appendix II PP. 6, 7, 8). Petitioner also ob-

jected to exh. D as follows:

> Plaintiff further objects to **exhibit D** as follows: 1) the terms " being first duly sworn: and "affiant" used in the text and other information contained within the four corners of exhibit D, identifies D as an affidavit which is inadmissible as it is undated and not sworn to before a notary public, hearing officer, or any identified person and therefore does not lay the required foundation for a charge of perjury if false. See: *Eytinge v. Territory*, 12 Ariz. 131, 100 P.2d 443 (1909); *Madsen v. Western Mortgage Co.*, 143 Ariz. 614, 694 P.2d 1228 (Ariz. App. 1985)

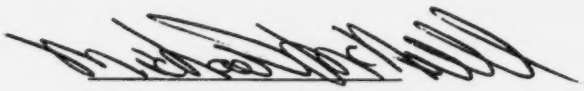
Doc. 105 PP. 2, 3.

On motion and cross motion for summary judgment at time motions were heard, there was no admissible evidence of a certifification for a valid complaint to issue as required by Arizona Statutes. Thus Petitioner was entitled to judgment in his favor as a matter of law as to the issue of Petitioner being summoned to appear on invalid complaint . Fed. R. Civ.P. 56(c) (Appendix II pp. 6, 7, 8) (Appendix VII); *SMS Mfg. Co. V. U.S.-Mengel Plywoods, Supra;People v. Harding, Supra; State Ex Rel Purcell v Superior Court, Supra;* ARS Sec. 28- 1062/1561; *State Ex Rel Purcell v Superior Court, Supra; Baumert v. Municipal Court for the City of Phoenix,Supra; Sweitzer v. Department of transportation, Motor Vehicle Division; Supra; Keller v. State, supra; Arizona constitution Art. III, IV;* doc. 102 exh. E; doc. 129, exh. 1 to exh. A, p. 103; Appendix II, doc. 127 p. 7 –14 through p. 8-25 ; doc. 129 exh A, to exh. 1). Giving Respondents numerous bites at the apple also denied Petitioner a fair trial

CONCLUSIONS:

This writ should be granted.

Respectfully Submitted this 30 day of June 2003



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